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January 16, 2007

Dale K. Hoffman-Floerke, Chief
Colorado River and Salton Sea Office
California Department of Water Resources
1416 Ninth Street
Sacramento, CA 95814

RE: COMMENTS ON THE PENDING
SALTON SEA CEQA PROCESS

Dear Ms. Hoffman-Floerke:

Enclosed is the Imperial Group's Erratum 2 Comments on the DPEIR, as well as the referenced exhibits. The original document was sent yesterday via email, fax and mail. This corrected document was emailed this morning. The only change in this document is on page three of the letter where reference to "four" principal problems with the DPEIR has been changed to "five" principal problems.

Sincerely,



Miriam Infinger
Paralegal to Patrick J. Maloney

Enclosures

- Exhibit A – May 26, 2006 Response to DWR
- Exhibit B – Partial Summary of Consortium Comments & Activities
- Exhibit C – Stetson Engineering Analysis
- Exhibit D – Dr. Reinelt Analysis
- Exhibit E – Water Rights/Supply & QSA Litigation Analysis

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VIA EMAIL (SaltonSeaComments@water.ca.gov)

Dale K. Hoffman-Floerke, Chief
Colorado River and Salton Sea Office
California Department of Water Resources
1416 Ninth Street
Sacramento, CA 95814

RE: COMMENTS ON THE PENDING
SALTON SEA CEQA PROCESS

Dear Ms. Hoffman-Floerke:

This statement is submitted in response to the Draft Programmatic Environmental Impact Report (DPEIR) for the Salton Sea Ecosystem Restoration Program. The statement is submitted on behalf of farmers, ranchers and other landowners who own approximately 25% of the irrigated agricultural land in the Imperial Valley, referred to in this comment letter as the Imperial Group.

The Imperial Group has created a Consortium of academic experts, international engineering and construction firms committed to a cost-effective and technically feasible Salton Sea Ecosystem Restoration Project which would optimize the water resources of the Colorado River for all of California, protect the natural resources of the Imperial and Mexicali Valleys, and meet the criteria of the California Environmental Quality Act (CEQA) and the Fish and Game Code for a Salton Sea Restoration Project that is the most protective of the environment. For the reasons acknowledged in the DPEIR and those presented in this letter, proposed Alternative 4, known as the Concentric Lakes Plan, meets these criteria.

The Consortium includes, but is not limited to, the following technical experts: Professors Jim Kelley, Dave Hornbeck, and Peter Reinelt, who have reviewed projects of this nature around the world and consulted with other international experts in evaluating the merits of the Concentric Lakes Plan. The Dutra Group, which has decades of experience with project in the Sacramento/San Joaquin Delta (including the current emergency levee repair and upgrade project), and Bean Stuyvesant and Boskalis International, which have similar expertise in New

Orleans, the Netherlands and elsewhere, have worked with The Imperial Group, Stetson Engineers and Moffat & Nichols in developing the conceptual design for the Concentric Lakes Plan. These firms are expert in water management, levee/water barrier construction, and environmental restoration projects, and would provide the engineering and construction services required to implement the Concentric Lakes Plan.

As noted above, the Imperial Group's proposed Alternative 4 meets CEQA criteria as the most protective of the environment, and also meets Fish and Game Code Sections 2931(c) and 2081.7(e)(2)(A) criteria specific to Salton Sea Restoration Project. It should be chosen as the Preferred Alternative as providing:

1. The most cost-effective and technically feasible alternative.
2. A long-term stable aquatic and shoreline habitat for diversity of fish and wildlife that would depend on the Salton Sea.
3. Protection for water quality and avoiding air impacts¹.

The Consortium commenced participation in CEQA review of Salton Sea restoration with its comments on the initial NOP and has continued to actively participate throughout the CEQA process. A partial Summary of the Consortium's comments and activities in the process are referenced in **Exhibit B** and are incorporated herein by this reference. The written and oral comments provided by the Consortium at various public meetings throughout the EIR process continue to be applicable to the issues and should be considered in the PEIR. These comments, as contained in the record and summarized herein, support selection of Alternative 4, the Concentric Lakes Plan, as the Preferred Alternative in the PEIR.

The Fish and Game Code requires that the evaluation of alternatives for the restoration of the Salton Sea include "at least one most cost-effective, technically feasible, alternative." Fish and Game Code Section 2081.7(e)(2)(A). The legislature also required that the "magnitude and practicability of costs of construction, operation and maintenance of each alternative be evaluated." Section 2081.7(e)(2)(B). While the ultimate selection of the preferred alternative must also take into account the factors identified in Fish and Game Code Section 2931(c), the above mentioned sections clearly recognize the importance that the legislature put on the

¹ The DPEIR fails to acknowledge the Imperial Group's May 26, 2006 response to the Department of Water Resource's (DWR's) questions concerning the Concentric Lake Plan and its Air Quality Management component, which is attached as **Exhibit A** to this comment letter and incorporated herein by reference. **Exhibit A** summarizes long-term Air Quality Management measures proposed in conjunction with the Concentric Lakes Plan and demonstrates that there is indeed a technically feasible and environmentally beneficial long-range plan for the reduction of air quality impacts, and contemplates the possibility of additional measures following studies during project-specific review.

selection of an alternative that would be feasible from both a cost as well as a technical perspective. Alternative 4 is best suited to meet these goals as it provides the most technically achievable design at a cost that is markedly less than all the other action alternatives.

Stetson Engineers and Dr. Peter Reinelt have provided detailed analyses of the engineering and economic problems with the DPEIR. This office provided a detailed water rights analysis of the landowners in the Imperial Valley that the DPEIR failed to discuss. Stetson Engineers' analysis is set forth in **Exhibit C**. Dr. Reinelt's Analysis is set forth in **Exhibit D**. The Imperial Group's analysis is set forth in **Exhibit E**.

There are five principal problems with the DPEIR. The problems can be cured because all of the necessary and appropriate information required to address them is available in the existing record established during the DEIR process:

1. The DPEIR fails to discuss the impact of the pre-existing permits and actions by Imperial Irrigation District (IID) and its landowners and the local, State and federal Governments on the permitting process. The current Salton Sea configuration was created after certain permits were obtained by the IID and its landowners and actions taken by the landowners, IID, and federal and State Government over the last 125 years. Under the holding in *Nacimiento Regional Water Management Advisory Committee v. Monterey County Water Resources Agency* (1993) 15 Cal.App.4th 200, these past actions may materially reduce the need for permits to engage in restoration activities at the Salton Sea. The DPEIR should thoroughly discuss this possibility because it may impact the start up and completion date for a Restoration Project.
2. The DPEIR fails to thoroughly discuss the water rights issues and the ramifications of litigation over the QSA. This discussion is important because of its impact on financing issues and the potential for developing evidence on the public trust doctrine. The problem has in part been exacerbated by the artificial choice of 1950 as the baseline for the restoration of the Salton Sea. If the water rights are thoroughly understood and discussed in the DPEIR, it may be possible to establish a guaranteed flow into the sea. This information is all available in the record developed in the CEQA process. See communications set forth in **Exhibit B**.
3. The recent decrease in water remaining in the Salton Sea and the potential for further reductions have major ramifications for natural resources, habitats and environmental concerns, and require immediate action on the Restoration Plan for the Salton Sea. Diminution of water in the Salton Sea's has escalated over the last 18 months, beyond that which is acknowledged in the current DPEIR. There are multiple contributing causes for this reduction, including the 3.1 cap under the QSA, drought on the Colorado River, increased optimization of the water resource by landowners in the Imperial Valley and IID, or some combination of these factors. This reduction was well documented in the CEQA process. It is important that the DPEIR not rely on static and potentially out of date figures for the size of the Salton Sea when, in fact, the evidence

shows that it has materially and recently diminished in size. See the comments filed by Imperial Valley Farm Bureau and our **Exhibit D** (Reinelt's analysis).

4. Throughout the CEQA process, the Consortium has emphasized the need for more testing, modeling and analysis, and the importance of the examination of other similar restoration projects around the world to aid in the development of the Restoration Plan. The Consortium has submitted information that argues for such analysis before selection and implementation of a Preferred Alternative. One of the areas where this has manifested itself has been in connection with the Air Quality Management component of the various alternatives. The Consortium has repeatedly argued that it is inappropriate to develop a project-specific Air Quality Management component until more testing has been done.

However, the Consortium has presented a viable long-range alternative using the currently available air quality data and believes that the necessary further testing can be conducted as a part of the next stage of environmental review. Program EIRs are intended to take a big picture look at alternatives and mitigation measures and thus there is sufficient information available at this time to make an informed selection of the preferred alternative, with the understanding that more project specific air quality data review will be conducted at a later date. See California Code of Regulations (CCR) Section 15168(b)(4); *Friends of Mammoth v. Town of Mammoth Lakes Redevelopment Agency*, 82 Cal.App.4th 511, 534 (2000) (emphasizing that Program EIRs are designed to address broad issues as "opposed to specific projects within the program").

5. The DPEIR erroneously states that the Concentric Lakes Plan includes no "long term irrigation facilities" and therefore assumes that there is no long term program for air quality mitigation in the Plan. See DPEIR at 10-73. As mentioned above in footnote 1, this assumption is incorrect. Rather, the Consortium has taken seriously the potential for air quality impacts and has developed a long-term plan to mitigate any impacts that might arise. The record reflects this as can be seen in the various exchanges with the Salton Sea Authority which are included in Appendix I, including the "March 28, 2006 Response from the Imperial Group." In addition, as noted above, May 26, 2006 response to Dale Hoffman-Floerke from Ali Shahroody at Stetson Engineers (**Exhibit A**) states that:

[I]rrigation, such as sprinklers and drip, would be used to establish native vegetation for the purpose of air quality management. Once the native vegetations are established, irrigation may be discontinued based on data from on-site experimental works. If it becomes a necessity to provide permanent irrigation for air quality protection, about 60,000 acre-feet is allocated in the water balance under the Concentric Lakes for the irrigation of the playa at an average rate of one acre-foot per acre.

The May 26 response also provides details on the exact source of the irrigation water, the manner in which it would be distributed, as well as the overall water balance which includes

irrigation water. The information in Appendix I also indicates that a perimeter canal for irrigation to control air quality would be constructed if necessary in a manner similar to those suggested in other alternatives. See "March 28, 2006 Response from the Imperial Group" 1.d; e-mail from Ali Shahroody on December 11, 2006 to Charles F. Keene.

This information should be incorporated into the DPEIR to correct the omission and make clear that the Concentric Lakes Plan provides for long-term air quality management measures that meets or exceeds the requirements of CEQA and the Fish and Game Code for programmatic review. This should also be reflected in the attribute matrix that evaluates all the alternatives.

The Imperial Group appreciates the State's willingness to listen independently to the agricultural interests of Imperial Valley. However, the Consortium continues to be concerned that, in connection with the preparation of the DPEIR, the State did not make a greater effort to hire consultants reflective of the diversity of the Imperial Valley community, which will be most impact by Salton Sea Restoration. The Consortium has made a significant effort in its hiring of its Advisors and developing its proposal and the Consortium believes it is in conformity with the spirit of the State of California on this issue as set forth in Public Utilities Code section 8283. The Consortium in its ultimate construction of this project plans to follow the spirit of Public Utilities Code section 8283. The State's behavior to date, however, does not.

In sum, and as recognized by environmental groups and as reflected in the many of the statements in the DPEIR itself, the Concentric Lakes Plan is by far the leading alternative in meeting the goals set out in CEQA, Fish and Game Code Sections 2931(c) and 2081.7(c)(2)(A). In addition to being the most cost effective alternative, it provides the most beneficial shoreline and aquatic habitat of any option considered, offers significant water quality improvements, and contemplates appropriate mitigation measures to significantly reduce long-term air quality impacts. Based upon its advantages in the statutorily mandated selection criteria the Concentric Lakes Plan should be chosen as the Preferred Alternative.

For the Consortium,

Patrick J. Maloney

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